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21 KALSHIEX, LLC,

22 Plaintiff,

23 v.

24 KIRK D. HENDRICK, in his official capacity  
25 as Chairman of the Nevada Gaming Control  
Board; GEORGE ASSAD, in his official  
26 capacity as a Member of the Nevada Gaming

27 Case No.: 2:25-CV-00575-APG-BNW

28 **DISCOVERY PLAN & SCHEDULING  
ORDER PURSUANT TO FED. R. CIV. P.  
26(f)(3) AND LR 26-1**

**SPECIAL SCHEDULING REVIEW  
REQUESTED PURSUANT TO LR 26-1(a)**

1 Control Board; CHANDENI K. SENDALL, in  
2 her official capacity as a Member of the Nevada  
3 Gaming Control Board; NEVADA GAMING  
4 CONTROL BOARD; JENNIFER  
5 TOGLIATTI, in her official capacity as Chair  
6 of the Nevada Gaming Commission; ROSA  
7 SOLIS-RAINEY, in her official capacity as a  
8 Member of the Nevada Gaming Commission;  
BRIAN KROLICKI, in his official capacity as  
a Member of the Nevada Gaming Commission;  
GEORGE MARKANTONIS, in his official  
capacity as a Member of the Nevada Gaming  
Commission; NEVADA GAMING  
COMMISSION; AARON D. FORD, in his  
official capacity as Attorney General of  
Nevada.

#### Defendants.

VS.

## NEVADA RESORT ASSOCIATION,

## Intervenor-Defendant.

14 Plaintiff KalshiEX, LLC (“Plaintiff”), Defendants Kirk D. Hendrick, George Assad,  
15 Chandeni K. Sendall, Nevada Gaming Control Board, Jennifer Tigliatti, Rosa Solis-Rainey, Brian  
16 Krolicki, George Markantonis, Nevada Gaming Commission, and Aaron D. Ford (collectively  
17 “Defendants”) and Intervenor-Defendant Nevada Resort Association (“Intervenor-Defendant”)  
18 (collectively the “Parties”), by and through their attorneys or record, hereby submit this Stipulated  
19 Discovery Plan and Scheduling Order pursuant to Fed. R. Civ. P. 26(f) and this Court’s May 30, 2025  
20 Order (ECF No. 71).

Plaintiff's Prefatory Position on Discovery: Plaintiff maintains that no discovery is warranted because this case presents pure questions of law. Plaintiff accordingly plans to move for summary judgment no later than August 1, 2025. At a status conference on April 15, 2025, Chief Judge Gordon indicated that a motion for summary judgment would be appropriate given Plaintiff's view that no discovery is warranted. In the meantime, the Court should not permit any discovery to commence and thereby avoid subjecting Plaintiff to the cost and burden of discovery even as Chief Judge Gordon is deciding whether the case can be resolved as a matter of law with no discovery. Upon seeking summary judgment, Plaintiff intends to file a motion for a stay of discovery to explain

1 in more detail why this matter warrants no further factual development. But Plaintiff summarizes its  
 2 position here.

3 This case presents the question whether federal law preempts certain Nevada gambling  
 4 statutes as applied to Plaintiff. As both the Supreme Court and Ninth Circuit have reaffirmed,  
 5 preemption “presents a purely legal question.” *In re Bard IVC Filters Prod. Liab. Litig.*, 969 F.3d  
 6 1067, 1073 (9th Cir. 2020). “Preemption is almost always a legal question, the resolution of which is  
 7 rarely aided by development of a more complete factual record.” *ReadyLink Healthcare, Inc. v. State*  
 8 *Comp. Ins. Fund*, 754 F.3d 754, 761–62 (9th Cir. 2014) (quotation marks omitted); *Atay v. County of*  
 9 *Maui*, 842 F.3d 688, 698 (9th Cir. 2016) (“The district court did not abuse its discretion in concluding  
 10 that SHAKA had failed to show that additional facts were essential to its ability to oppose summary  
 11 judgment on preemption grounds.”). Accordingly, the topics related to preemption for which  
 12 Defendants and Defendant-Intervenor seek discovery involve legal questions that require no  
 13 factfinding.

14 Defendants and Defendant-Intervenor additionally seek discovery related to the magnitude of  
 15 Plaintiff’s harm. But Chief Judge Gordon already found that Plaintiff established irreparable harm  
 16 because it “faces a Hobson’s choice” between complying with preempted state laws or incurring  
 17 “civil and criminal liability.” *KalshiEX, LLC v. Hendrick*, No. 25-cv-00575, 2025 WL 1073495, at  
 18 \*7 (D. Nev. Apr. 9, 2025). Plaintiff’s monetary harm is likewise irreparable as a matter of law because  
 19 the Tenth Amendment would bar Plaintiff from recovering damages in this suit against state agencies  
 20 and officials under *Ex Parte Young*. “Economic harm is not normally considered irreparable,” but  
 21 “such harm is irreparable” where, as here, a plaintiff “will not be able to recover monetary damages.”  
 22 *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018). The harm analysis “focuses on irreparability,  
 23 ‘irrespective of the magnitude of the injury.’” *Id.* (quoting *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716,  
 24 725 (9th Cir. 1999)).

25 Should the Court nonetheless conclude that Defendants and Defendant-Intervenor are entitled  
 26 to discovery, Plaintiff reserves the right to seek discovery from them, including with respect to their  
 27 assertions about their own harms and the public interest.

1        As noted above, Plaintiff intends to move for summary judgment by August 1, 2025, at which  
 2 time it will seek a stay of discovery and explain in more detail why no discovery is warranted. In the  
 3 meantime, Kalshi respectfully requests that this Court decline to approve Defendants' and Defendant-  
 4 Intervenor's Discovery Plan. A short period of abeyance would avoid interfering with Chief Judge  
 5 Gordon's judgment regarding whether this case can be resolved with no factfinding. In a recent  
 6 comparable case, this Court agreed to await resolution of a dispositive motion before ordering  
 7 discovery “[g]iven the legal nature” of arguments presented. *Brown v. Am. Homes 4 Rent, LP*, 2024  
 8 WL 4826454, at \*2 (D. Nev. Nov. 18, 2024).

9              **Defendants' and Intervenor-Defendant's Prefatory Position on Discovery:**

10          Defendants and Intervenor-Defendant propose that discovery in this action proceed in the  
 11 normal course, although along a shortened discovery schedule to account for the pending preliminary  
 12 injunction. Discovery is necessary in this action, among other reasons, to identify and evaluate exactly  
 13 what sports event contracts Plaintiff is offering so that the Court's decision is made based on vetted  
 14 facts rather than Plaintiff's representations, and to evaluate Plaintiff's claims of conflict preemption,  
 15 which is typically a fact-dependent inquiry rather than a pure question of law. See *Chowdhury v.*  
 16 *Northwest Airlines Corp.*, 238 F.Supp.2d 1153, 1157 (N.D. Cal., 2002) (declining to decide whether  
 17 state law claim was preempted by the Airline Deregulation Act before discovery had been conducted)  
 18 (quoting *The Colorado Anti—Discrimination Commission v. Continental Air Lines, Inc.*, 372 U.S.  
 19 714, 719 (1963) (“The line separating the powers of a State from the exclusive power of Congress is  
 20 not always distinctly marked; courts must examine closely the facts of each case to determine whether  
 21 the dangers and hardships of diverse regulation justify foreclosing a State from the exercise of its  
 22 traditional powers.”)). Discovery is further necessary to disprove Plaintiff's factual allegations and  
 23 other contentions including but not limited to 1) that Plaintiff's sports event contracts are  
 24 distinguishable from sports bets regulated by Nevada; 2) that the CFTC has allowed Plaintiff to offer  
 25 its self-certified sports event contracts; 3) that Plaintiff's sports event contracts do not harm the public  
 26 interest or create risk for Nevada customers, for the Nevada gaming industry, or for organized sports  
 27 (professional or amateur) operating in Nevada; 4) prior statements of Kalshi or its representatives  
 28 regarding the legality of offering sports event contracts; 5) that Plaintiff will suffer irreparable injury

1 absent a permanent injunction; and 6) that geofencing is cost prohibitive or otherwise unfeasible.  
 2 Defendants and Intervenor-Defendant contend that Plaintiff's claims require vetting through  
 3 discovery and that any decision rendered in favor of Plaintiff without discovery would not be  
 4 defensible.

5 At a minimum, Plaintiff should be required to immediately seek a stay of discovery in  
 6 compliance with the Local Rules, rather than delay this filing until they seek summary judgment at a  
 7 later date. There is no reason for these motions to proceed in parallel and create further delay by  
 8 postponing the Court's decision on whether Plaintiff can initiate this action yet avoid any discovery  
 9 vetting its claims and representations. It is Defendants and Intervenor-Defendants' understanding  
 10 from the May 16, 2025 status conference that the Court was inclined for the matter to proceed with  
 11 discovery in the normal course.

12       **1. Initial Disclosures (Fed. R. Civ. P. 26(f)(3)(A)) –**

13       Defendants and Intervenor-Defendant submit that initial disclosures shall be exchanged  
 14 within **14 days** from the date this Discovery Plan is entered.

15       **2. Pending Discovery Requests – None.**

16       **3. Discovery Subjects and Whether Discovery Should Be Conducted in Phases or**  
 17 **Be Limited to or Focused on Certain Issues (Fed. R. Civ. P. 26(f)(3)(B)) –** The Parties do not  
 18 believe that phased discovery or the bifurcation of discovery is necessary.

19       Defendants and Intervenor-Defendant submit that discovery should be allowed on all claims  
 20 and defenses in this action, including but not limited to:

- 21           a) Plaintiff's event contracts;
- 22           b) Plaintiff's market and liquidity, including whether Plaintiff participates as a  
                 market maker or has contractual or financial arrangements with affiliates to  
                 participate in the event contracts offered to customers;
- 23           c) Plaintiff's disclosures to customers;
- 24           d) Plaintiff's statements regarding the nature of its products and event contracts,  
                 including but not limited to investors, business partners, contractors, service  
                 providers, and similarly situated persons or entities;

- 1 e) Plaintiff's communications with the CFTC and other federal agencies or
- 2 entities;
- 3 f) Plaintiff's marketing and advertising; and
- 4 g) Plaintiff's customer protection efforts, know-your-customer efforts, and
- 5 technological and financial safeguards.

6 **4. Proposed timing and sequence of discovery:**

7 Defendants and Intervenor-Defendant submit that the following discovery deadlines should  
8 be entered:

- 9 a) Initial disclosures: 14 days after the date on which this Court's enters an order  
10 approving this Discovery Plan, or alternatively July 17, 2025.
- 11 b) Discovery cut-off: 120 days after the date on which this Court's enters an order  
12 approving this Discovery Plan, or alternatively October 31, 2025.
- 13 c) Amend pleadings or add parties: 90 days before the close of discovery pursuant  
14 to LR 26-1(b)(2), or alternatively August 1, 2025.
- 15 d) Expert disclosures: 60 days before the close of discovery pursuant to LR 26-  
16 1(b)(3), or alternatively September 1, 2025.
- 17 e) Expert rebuttal disclosures: 30 days after the initial expert disclosure deadline  
18 pursuant to LR 26-1(b)(3), or alternatively October 1, 2025.
- 19 f) Dispositive motions: 15 days after the close of discovery, or alternatively  
20 November 17, 2025. The Parties further agree that any opposition to a  
21 dispositive motion shall be due 30 days after the filing of the motion, and any  
22 reply shall be due 30 days after the filing of the opposition.
- 23 g) Pretrial order: 30 days after the discovery motion deadline pursuant to LR 26-  
24 1(b)(5), or alternatively December 17, 2025.

25 **5. Pretrial disclosures:** The disclosures required by FRCP 26(a)(3) and any objection  
26 thereto shall be included in the Pretrial Order. No changes are necessary in the form or requirement  
27 for disclosures under Fed. R. Civ. P. 26(a)(3).

1       6.     **Extensions or Modifications of the Discovery Plan and Scheduling Order:** LR 26-  
2     3 governs modifications or extensions of any discovery plan and scheduling order. Any stipulation  
3     or motion must be made no later than twenty-one (21) days before the subject deadline and comply  
4     fully with LR 26-3. Any request made within twenty-one days before the expiration will be supported  
5     by a showing of good cause pursuant to LR 26-3.

6       7.     **Electronic Information:** The Parties have discussed the retention and production of  
7     electronic data. Should discovery occur, the Parties anticipate entering into an ESI Protocol and  
8     Stipulated Protective Order.

9       8.     **Electronic Evidence:** The Parties certify that they have discussed whether they intend  
10    to present evidence in electronic format to jurors for the purposes of jury deliberations and have  
11    agreed to meet and confer to address any disagreements about the form of evidence presented to  
12    jurors but will comply with the District's Local Rules on electronic evidence.

13      9.     **Privileged or Protected Documents:** The Parties believe a confidentiality stipulation  
14    may be necessary to protect their confidential and/or proprietary information in the event any  
15    discovery occurs. Should the Court order discovery, the Parties intend to work together to reach an  
16    agreed Stipulated Protective Order to address the protection of confidential, proprietary, and private  
17    information and will file an agreed-upon Stipulation with the Court, or separate ones for resolution  
18    by the Court if the Parties cannot agree.

19      10.    **Alternative Dispute Resolution:** The Parties hereby certify pursuant to LR 26-1(b)(7)  
20    that they met and conferred about the possibility of using alternative dispute-resolution processes  
21    including mediation, arbitration, and if applicable, early neutral evaluation (collectively, ADR). The  
22    Parties determined that ADR is not a viable option at this time.

23    ///

24    ///

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1       11. **Alternative Forms of Case Disposition** (L.R. 26-1(b)(8)). The Parties certify that  
2 they have considered consent to trial by a magistrate judge under U.S.C. 636(c) and Fed. R. Civ. P.  
3 73 and the use of the Short Trial Program (General Order 2013-01), and do not consent to those  
4 alternative forms of case disposition at this time.

5 DATED this 2nd day of July, 2025.

6       DATED this 2nd day of July, 2025.

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8 **MILBANK LLP**

9 **AARON D. FORD**  
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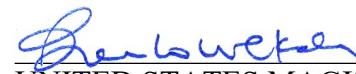
28 DATED this 2nd day of July, 2025.

15 **McDONALD CARANO LLP**

16 /s/ Adam Hosmer-Henner  
17 Adam Hosmer-Henner (Bar No. 12779)  
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23 **IT IS FURTHER ORDERED** that Defendants' proposal to move forward with discovery pending  
24 resolution of the motion for summary judgment is adopted. Plaintiff can file the appropriate motion  
25 to stay discovery so as to afford the Court well-developed arguments in support of its request.

26   
27 UNITED STATES MAGISTRATE JUDGE

28 Dated: 7/7/2025